

OFFICIAL COPY

Fresno, California

May 2, 2006

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Tom Boyajian	Councilmember
	Brian Calhoun	Councilmember
	Mike Dages	Councilmember
	Cynthia Sterling	Councilmember
	Larry Westerlund	Councilmember
	Henry Perea	Acting Council President
Absent:	Jerry Duncan	Council President

Andy Souza, City Manager
James Sanchez, Interim City Attorney
Becky Klisch, City Clerk
Yolanda Salazar, Assistant City Clerk

Pastor Lee Cruise of the First Congregational Church gave the invocation, and Acting President Perea led the Pledge of Allegiance.

A moment of silence was observed for all fallen officers and Peace Officers' Memorial Day.

PRESENTATION OF THE SPCA PET OF THE MONTH - COUNCILMEMBER STERLING

PROCLAMATION OF PEACE OFFICERS' MEMORIAL DAY - ACTING PRESIDENT PEREA

PROCLAMATION OF WATER AWARENESS MONTH - MAYOR AUTRY AND COUNCILMEMBER WESTERLUND

PROCLAMATION OF TEEN PREGNANCY PREVENTION MONTH - COUNCILMEMBER STERLING (2 - 0).

EOC SANCTUARY SAFE PLACE YOUTH SERVICE RECOGNITION OF THE DEPARTMENT OF TRANSPORTATION/FRESNO AREA EXPRESS

PRESENTATION BY THE CENTRAL VALLEY CHAPTER OF MADD TO THE POLICE DEPARTMENT FOR THEIR OUTSTANDING CONTRIBUTION TO MADD'S MISSION - ACTING PRESIDENT PEREA

RESOLUTION OF COMMENDATION TO THE CENTRAL PRINTING DIVISION FOR THEIR BRONZE AWARD IN THE IN-PRINT 2005 NATIONAL PRINTING CONTEST.

The above presentations and recognitions were made and the proclamations and resolution were read and presented.

APPROVE MINUTES:

On motion of Councilmember Sterling, seconded by Councilmember Westerlund, duly carried, RESOLVED, the minutes of April 25, 2006, approved as corrected by Councilmember Westerlund, Page 147-135, 4th paragraph, changing the *Hispanic Chamber of Commerce* to the *Fresno Area Hispanic Chamber of Commerce*.

COUNCIL MEMBER REPORTS AND COMMENTS:

147-148

5/2/06

Councilmember Westerlund commended the 15,000 demonstrators who participated at the City Hall rally yesterday for a peaceful demonstration and stated despite ones' position on the immigration issue this was an exercise in their First Amendment rights.

Councilmember Boyajian (1) thanked the Lions' Clubs for their conference held in Fresno this past weekend which culminated in a spirited debate by four students with a winning prize of \$4,000 and commended the students on a great job, and (2) requested staff address the problem of dead and dying potted plants on Van Ness Avenue between Kern and Tulare Streets.

Councilmember Calhoun (1) advised he and Councilmember Westerlund attended the Shin Zen Garden 25th anniversary event on Saturday and the formal dinner that evening at the Piccadilly Inn with the Kochi, Sister City delegation stating they were wonderful events which showcased Fresno; (2) requested staff assist Mrs. George O'Brien, widow of deceased employee George O'Brien, in any way possible in receiving financial/insurance benefits, with City Manager Souza stating it was an unfortunate situation and staff was working hard on the issue and would look into what recourse the City had with Local 39; (3) questioned when the joint meeting with the Board of Supervisors on consolidation would be held, with Mr. Souza stating at this point it was planned for July; and (4) expressed his concern with the continued Herndon Avenue construction delays stating he had no confidence in contractor M.J. Menefee Construction and wanted them removed from the project and further elaborated on issues and expressed concern, and advised he would be scheduling the matter on the agenda in one week for public input. Mr. Souza stated the pros and cons of the situation were weighed by staff, staff would continue to work on the issue, and advised he would attend Councilmember Calhoun's district meeting to respond to the public's concerns. Interim City Attorney Sanchez added the matter would also be scheduled for closed session next week wherein Council could discuss issues before discussing the matter in open session. Upon question of Acting President Perea Mr. Sanchez clarified the closed session item scheduled this date dealt with NNLB. Councilmember Dages spoke to the problems his district has had with the company on NNLB stating one project still has not been completed and one has not even started, with Assistant City Manager Ruiz advising that matter was scheduled for closed session this date and those issues would be discussed.

Councilmember Dages (1) requested an update/status on the ordinance he requested staff draft last October relative to requiring developers to install traffic signals, and (2) again reminded everyone of the Celebrity Charity Poker tournament and dinner this coming Saturday at Club One Casino.

Councilmember Sterling recognized and spoke to (1) Assemblyman Arambula's successful clean-up event last Saturday morning in the west Fresno area, to her first ride in a low-rider car and to the award she received from the Chicano Youth Center that afternoon during their Cesar Chavez celebration, to the Memorial Auditorium Anniversary event that evening and urged all to visit the Veteran's Historical Museum stating it was one of Fresno's best tourist attractions, to the Security Bank Building now housing the Center for the Blind and encouraged everyone to visit the center stating she was very impressed with the equipment and commended the groups involved, and to Sunday's cruise season event at the Mosqueda Center; (2) commended the organizers of the immigration march and the demonstrators, the city manager's office, the police department and all other organizations who helped to make it a peaceful demonstration and added she supported where the UFW and agricultural community were and to the need to work for immigration rights; and (3) relative to NNLB stated it was set up to improve neighborhoods and provide jobs, and stated city crews completed her district's projects on time and stated she wanted her future projects handled by city staff.

Acting President Perea announced and extended an invitation to the Fire Chiefs' Foundation fund raising event this coming Saturday at Central Distributing from 1- 5 p.m; encouraged all to support our local artists and attend the Art Hop event this coming Thursday; encouraged all to attend Friday's independent film festival at the Tower Theater stating it was of the best festivals in the central valley; and reminded Council of the Peace Officers' Memorial ceremony at 12 noon this date at courthouse park.

APPROVE AGENDA:

(1-K) RESOLUTION - INTENT TO ANNEX FINAL TRACT NO. 5352 TO CFD NO. 11, ANNEXATION NO. 3, AND SETTING THE REQUIRED PUBLIC HEARING FOR MAY 23, 2006

Removed from the agenda by staff.

(10:30 A.M. #1) CONTINUED HEARING TO CONSIDER ADOPTION OF A RESOLUTION DESIGNATING THE PEACH AVENUE USDA HORTICULTURAL FIELD STATION HISTORIC DISTRICT AT 2021 S. PEACH AVENUE TO THE LOCAL REGISTER OF HISTORIC RESOURCES (*Refer back to staff*)

Referred back to staff.

147-149

5/2/06

(9:30 A.M.) CONSIDERATION OF CURRENT NOISE ORDINANCE AND DIRECTION TO STAFF REGARDING EXTENDING HOURS ALLOWING HIGHER DECIBEL LIMITS FOR THE DOWNTOWN AREA - ACTING PRESIDENT PEREA

Upon question of Councilmember Boyajian, Acting President Perea stated no written material was submitted on the matter as the intent was to have an oral report by the planning & development director to start discussion and then see where Council wanted to go.

On motion of Councilmember Westerlund, seconded by Councilmember Dages, duly carried, RESOLVED, the **AGENDA** hereby approved, *as amended*, by the following vote:

Ayes :	Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
Noes :	None
Absent :	Duncan

ADOPT CONSENT CALENDAR:

Councilmember Boyajian pulled Item **1-L** and Councilmember Westerlund pulled Items **1-E** and **1-J** from the consent calendar for later discussion/action under contested consent.

(1-A) APPROVE APPOINTMENT OF ALBERT SALAZAR TO THE WEST AREA COMMITTEE - COUNCILMEMBER STERLING

Councilmember Sterling recognized new appointee Mr. Salazar and wished him luck stating hopefully he would enjoy working with the west area.

(1-B) APPROVE (1) ACCEPTANCE OF MERCURY AIR CENTERS' SURRENDER OF PART OF ITS LEASEHOLD AT FYI, (2) LEASE OF THAT MERCURY-SURRENDERED PROPERTY TO BURGUNDY PARTNERS, LLC, WITH AN OBLIGATION TO DEVELOP IT, (3) ACCEPTANCE OF BURGUNDY'S SURRENDER OF ITS CURRENT FYI LEASEHOLD AFTER DEVELOPMENT OF THE SURRENDERED MERCURY PROPERTY, (4) LEASE OF BURGUNDY'S THEN SURRENDERED PROPERTY TO MERCURY, (5) ACCOMPLISHING A PHASED SWAP OF PROPERTIES BETWEEN MERCURY AND BURGUNDY, AND (6) A 19-YEAR EXTENSION OF ANOTHER MERCURY LEASE OF FYI PROPERTY

(1-C) APPROVE ACCEPTANCE OF AN EARLY RELEASE FROM THE LEASE OF LOT 10 WITH MARION LAWTON AT THE FRESNO CHANDLER EXECUTIVE AIRPORT

(1-D) ADOPT RESOLUTION OF INTENTION NO. 1050-D TO VACATE A PORTION OF THE INTERSECTION OF W. BELLAIRE AND N. MILBURN AVENUES, AND SETTING THE REQUIRED PUBLIC HEARING FOR MAY 23, 2006

(1-F) APPROVE THE ACQUISITION OF A STREET EASEMENT AT 2047 N. POLK AVENUE FROM PROPERTY OWNED BY BILLY AND SANDY PIERCE, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR TO ACCEPT THE DEED OF EASEMENT FOR THE ROAD RIGHT OF WAY AND EXECUTE THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND COMPLETE THE ACQUISITION THROUGH ESCROW

(1-G) AWARD A CONTRACT IN THE AMOUNT OF \$591,149 TO KAWEAH CONSTRUCTION CO. FOR THE PURCHASE AND INSTALLATION OF A NEW RAW SEWAGE PUMP PROJECT AT THE REGIONAL WASTEWATER RECLAMATION FACILITY (RWRC) HEADWORKS

(1-H) AUTHORIZE SUBMISSION OF THE ANNUAL TRANSPORTATION FUNDING CLAIM FOR FRESNO'S LTF AND STA ENTITLEMENT IN THE AMOUNT OF \$18,460,059 (PLUS ANY ADDITIONAL FUNDS MADE AVAILABLE DURING FY 2006), AND AUTHORIZE THE DIRECTOR OF TRANSPORTATION TO EXECUTE ALL CLAIM DOCUMENTS ON BEHALF OF THE CITY

**(1-I) RESOLUTION NO. 2006-163 - APPROVE THE FINAL MAP OF TRACT NO. 5338 AND ACCEPTING DEDICATED PUBLIC USES THEREIN, SOUTH SIDE OF W. BULLARD WEST OF THE GRANTLAND/BULLARD AVENUES INTERSECTION
1. AUTHORIZE THE PUBLIC WORKS DIRECTOR, THE PUBLIC UTILITIES DIRECTOR AND THE PLANNING & DEVELOPMENT DIRECTOR TO EXECUTE THE NECESSARY DOCUMENTS**

147-150

5/2/06

On motion of Councilmember Westerlund, seconded by Councilmember Sterling, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
 Noes : None
 Absent : Duncan

Councilmember Calhoun stated he was excited to see the things and activity happening at the airport and wished the entrepreneurs all the best.

(9:00 A.M.) PUBLIC COMMENT PERIOD - UNSCHEDULED COMMUNICATIONS:

APPEARANCE BY ED ECHOLS REQUESTING WAIVER OF A PARKING TICKET RECEIVED THREE MINUTES AFTER THE METER EXPIRED

Request made and the matter was referred to the city manager's office to refer to staff.

(9:15 A.M. "A") AUTHORIZE NEGOTIATION AND ENTRY OF A NON-PROFESSIONAL SERVICES AGREEMENT WITH THE LOCAL 1-800-GOT-JUNK FRANCHISE FOR AN INTERIM THREE MONTH PILOT PROGRAM TO GATHER DATA AND INFORMATION ON A POTENTIAL ALTERNATIVE METHOD FOR DELIVERING OPERATION CLEAN UP SERVICE

Interim Public Utilities Director Ramirez gave an in-depth overview of the issue including the current Operation Clean Up (OCU) program, its challenges, and the proposal by local businessman John Shegerian of 1-800-Got-Junk ("GJ") for an alternative to the current OCU program, all as contained in the staff report as submitted, and recommended approval.

Extensive discussion ensued with Mr. Ramirez, City Manager Souza and Mr. Shegerian responding throughout to questions, comments and/or concerns of Councilmember Calhoun relative to support to see this proposal come forth, concerns with the current program i.e. junk piles all over the city (**3 - 0**), and request for assurance the people in the pilot program will not place their waste in streets/front yards as that would confuse their neighbors into thinking it was their OCU time; of Councilmember Dages relative to what was wrong with the current OCU program, if there would be a charge, concern with a future rate increase, the voucher system and how it will work, if GJ will pick up everything that is typically left out for OCU, if GJ will haul waste from back yards, if people who pay for this service can still participate when the normal OCU comes around, concern with limiting the consumer on the amount of waste they can put out, what will happen if GJ does not want to pick up some of the waste, and support for the current program and concern with trying to fix it when it is not broken; of Councilmember Boyajian relative to concern with the current large amount of illegal dumping/scavenging and support for an alternative, how the target areas will be determined, hope that the program mitigates issues and is successful; and of Councilmember Westerlund relative to whether GJ will go into someone's home/garage for pick-ups, if the waste will not have to be put out on the street, size/example of 100 cubic feet, if GJ was fully licensed and bonded, diverting material for recycling or donations, if records will be kept to see if the program is working and if the City will be given full access to those records, how the current program will dovetail with the new proposal, if the notice to customers will be clear with appropriate phone numbers included for questions, current monthly cost for OCU, and if staff currently tracks was is collected. Councilmember Westerlund stated it made sense to implement this program noting the cost and details of the proposal would come back to Council, and stated this would add a level of personalized service.

Addressing some of the concerns and comments made Mr. Souza reiterated this proposal was not indicative of any problems with OCU stating staff does an outstanding job based on the current system, stated the question was "is there a better system?" and that was what staff wanted to look at through this opportunity with GJ, noted 100 cubic feet was a good size and would hold a lot of material, emphasized staff learned from the containers-in-view ordinance and was taking the initial notice very seriously and added a lot of the success would hinge on that notice, and stated he was excited about this opportunity to see what information comes back and to see where this takes the city.

Upon question of Councilmember Boyajian Mr. Shegerian stated his company was set up to accommodate customers at home or not and would pick up anything that was not hazardous. Acting President Perea stated he would cautiously support this to see if there is a better way to deliver the service and added he was disappointed when OCU went down to once a year.

147-151

5/2/06

On motion of Councilmember Westerlund, seconded by Councilmember Sterling, duly carried, RESOLVED, an interim pilot program to gather data and information on a potential alternative method for delivering operation clean-up (OCU) service hereby approved, and staff authorized to negotiate and enter into a nonprofessional services agreement with the local 1-800-Got-Junk franchisee to carry out the interim three-month pilot program to be conducted within each council district covering a total of not more than 1,000 homes at a total cost to the City not to exceed \$98,000, subject to city attorney approval as to form, by the following vote:

Ayes : Boyajian, Calhoun, Sterling, Westerlund, Perea
Noes : Dages
Absent : Duncan

(9:30 A.M.) CONSIDERATION OF CURRENT NOISE ORDINANCE AND DIRECTION TO STAFF REGARDING EXTENDING HOURS ALLOWING HIGHER DECIBEL LIMITS FOR THE DOWNTOWN AREA - ACTING PRESIDENT PEREA

Acting President Perea clarified he scheduled this issue as a recommendation of the Creative Economy Council (CEC) and to get further information from staff and Council input, and upon his request Planning & Development Director Yovino explained the history of the noise ordinance, spoke to potential positive and negatives of extending it in the downtown area, advised a change would require a code and general plan amendment, and stated if Council so directs staff from the planning & development, parks & recreation, city attorney and police departments will draft the appropriate text amendment for Council to consider for acceptance and initiation or further direction. Upon question, Deputy Police Chief Nevarez stated the department was supportive of the issue in concept but clarified the amendment would have to be balanced and take into consideration the rights of current and future residents in close proximity to this type of use.

Al Smith , Chamber of Commerce, spoke in support of the issue stating expanding the ordinance would help to make the downtown area more viable and urged Council to seriously consider that.

Lengthy discussion ensued with Mr. Yovino, Interim City Attorney Sanchez and Deputy Chief Nevarez clarifying issues and/or responding to questions of Councilmembers Calhoun, Dages, Boyajian and Sterling relative to whether the noise level or hours of operation of a business was at issue, if most cities had a 65 decibel level, what the difference was between 60 and 65 decibels, need for Council to give direction on extending businesses' hours of operation **(4 - 0)**, if the police department had any concerns with extending hours, request to hear the difference between 60 and 65 decibels, need to be sensitive to Masten Towers, Silvercrest, apartments and hotel guests in the area, support for the issue to see what comes back, it being unclear as to what will change since bars are regulated by the ABC, if the intent here was to increase decibels inside establishments or at outside events, if the police department currently monitors decibel levels, a sound test being possible as it was done for the planning commission in the past, and support for a change to benefit downtown establishments.

In response to a question of Councilmember Boyajian Acting President Perea stated downtown's environment would change and businesses that want to cater to after-hours crowds would have the opportunity to move in, noted at this time downtown was still largely vacant of homeowners and added if the ordinance passes people who move into the downtown area will know beforehand they are moving into a more lively area, stated the police department's enforcement in the area would also change and explained, added if this matter moves forward it will need to be made clear that it will affect downtown only, stated this will be an opportunity to see if it will work and if it will remove one more barrier from entrepreneurs who want to create downtown entertainment districts, and made a motion to direct staff to draft an amendment and return to Council, with Mr. Yovino stating staff could return in about 30 days. Councilmember Calhoun stated other entertainment establishments throughout the city may ask for the same thing and stated although he would support the motion he might not be happy with just one area of the city getting special treatment.

On motion of Acting President Perea, seconded by Councilmember Westerlund, duly carried, RESOLVED, staff directed to return with a draft ordinance extending hours allowing higher decibel limits for the downtown area, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
Noes : None
Absent : Duncan

(10:00 A.M.) HEARING ON REZONE APPLICATION NO. R-05-67 AND ENVIRONMENTAL FINDINGS FILED BY SUBDIVIDER HANSEN EDENBRIDGE, INC., AND PROPERTY OWNERS DAVID & FRANCES VALENZUELA AND JOSEPH &

DELIA GARCIA, PROPERTY LOCATED ON THE WEST SIDE OF N. POLK BETWEEN W. SHIELDS AND W. DAKOTA AVENUES - 3201 N. POLK AVENUE

147-152

5/2/06

1. CONSIDER AND ADOPT E.A. NO. R-05-67/R-5537/C-05-195, FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR
2. BILL - AMENDING THE OFFICIAL ZONE MAP TO REZONE THE SUBJECT PROPERTY FROM RR TO R-1/UGM

Acting President Perea advised his grandparents were the property owners and recused himself from the proceedings and left the meeting at 11:19 a.m.

Acting Chair Sterling announced the time had arrived to consider the issue and opened the hearing.

Planning & Development Director Yovino noted rezoning applications are put into a super-majority situation when two members are absent, advised the direct applicant was unable to be here and the applicants were supportive of a one week delay, and recommended the hearing be continued one week.

On motion of Councilmember Westerlund, seconded by Councilmember Dages, duly carried, RESOLVED, the hearing on R-05-67 continued to May 9, 2006, at 9:45 a.m., by the following vote:

Ayes :	Boyajian, Calhoun, Dages, Westerlund, Sterling
Noes :	None
Absent :	Duncan
Recused :	Perea

Acting President Perea returned to the meeting at 11:21 a.m.

(10:15 A.M.) HEARING ON REZONE APPLICATION NO. R-05-62 AND ENVIRONMENTAL FINDINGS FILED BY DEYOUNG PROPERTIES, NORTHEAST CORNER OF THE E. TEAGUE/N. CHESTNUT AVENUES INTERSECTION

1. CONSIDER AND ADOPT E.A. NO. R-05-62/T-5553, FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR
2. **BILL NO. B-63 - ORDINANCE NO. 2006-61** - AMENDING THE OFFICIAL ZONE MAP TO REZONE THE SUBJECT PROPERTY FROM R-A/UGM TO R-1/UGM

Acting President Perea announced the time had arrived to consider the issue, opened the hearing, and upon his question Planner Tackett advised the staff report as submitted was complete and added into the record, in response to concerns of President Duncan's office, that approval of the vesting tentative tract map was conditioned upon the subdivider providing signalization at the Chestnut/Teague intersection.

Upon call, no one wished to be heard and Acting President Perea closed the hearing.

Upon question of Councilmember Westerlund, Mr. Tackett confirmed the signal was agreed to by the applicant

On motion of Councilmember Westerlund, seconded by Councilmember Dages, duly carried, RESOLVED, the environmental finding for the E.A. dated January 26, 2006, that the project proposal conforms to the provisions of the General Plan MEIR hereby approved, and the above entitled Bill No. B-63 rezoning the subject property adopted as Ordinance No. 2006-61, by the following vote:

Ayes :	Calhoun, Dages, Sterling, Westerlund, Perea
Noes :	Boyajian
Absent :	Duncan

(10:30 A.M. #3) JOINT MEETING WITH THE REDEVELOPMENT AGENCY

The City Council recessed at 11:23 a.m. and convened in joint session with the Redevelopment Agency.

APPROVE AGENCY MINUTES OF APRIL 25, 2006

On motion of Councilmember Westerlund, seconded by Acting President Perea, duly carried, RESOLVED, the Agency minutes of April 25, 2006, approved as submitted.

147-153

5/2/06

("A") APPROVE AND AUTHORIZE THE AGENCY EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND TRI CITY ENGINEERING FOR PREPARATION OF PLANS AND RELATED DOCUMENTS FOR RECONSTRUCTION OF GOLDEN STATE BOULEVARD BETWEEN ASHLAN AND SHAW AVENUES WITHIN THE FREEWAY 99-GOLDEN STATE CORRIDOR REDEVELOPMENT PROJECT AREA (**AGENCY ACTION**)

Redevelopment Agency Executive Director Murphey reviewed the issue, all as contained in the staff report as submitted, and recommended approval.

Councilmember Boyajian stated he really appreciated the project and it was nice to see something positive happening, thanked the Agency, stated Saladinis and Marquez Brothers showed the possibilities for the area and added he hoped to see more developments like those come in, and made a motion to approve staff's recommendation.

On motion of Councilmember Boyajian, seconded by Councilmember Dages, duly carried, RESOLVED, the agreement between the Redevelopment Agency and Tri City Engineering hereby approved, and the Agency Executive Director authorized to sign the agreement on behalf of the Redevelopment Agency, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Perea, Westerlund, Sterling
 Noes : None
 Absent : Duncan

The joint meeting was adjourned at 11:28 a.m.

LUNCH RECESS - 11:28 A.M. - 2:03 P.M.

(10:30 A.M. #2) CONTESTED CONSENT CALENDAR:

(1-L) BILL NO. B-52 - ORDINANCE NO. 2006-62 - AMENDING THE FMC RELATING TO PROHIBITING THE USE OF STREETS FOR HABITATION, REMOVAL OF VEHICLES FROM STREETS, AND PROHIBITING THE USE OF STREETS FOR STORAGE OF VEHICLES

Councilmember Boyajian clarified he supported the ordinance and upon his question City Clerk Klisch stated the matter was on the agenda last week for introduction and the normal procedure was followed relative to public noticing and opportunity for public input. Upon Councilmember Boyajian's request, Parking Manager Estabrooke explained the intent of the ordinance, what it would do, and how staff would deal with some things people do, i.e. moving vehicles from one spot to another. A motion and second was made to adopt the ordinance. Councilmember Calhoun stated he was extremely happy with this ordinance, stated there had been plenty of warning to people who play games and explained, and stated this would finally untie staff's hands so they can address problems.

On motion of Councilmember Boyajian, seconded by Councilmember Westerlund, duly carried, RESOLVED, the above entitled Bill No. B-52 adopted as Ordinance No. 2006-62, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
 Noes : None
 Absent : Duncan

(1-E) APPROVE THE REVISED THREE-YEAR UNDERGROUND UTILITY DISTRICT (UUD) PLAN

Assistant Public Works Director Kirm responded to questions of Councilmember Westerlund relative to why the Chestnut project between Shaw & Bullard was removed from the plan, what will happen if development on the east side of Chestnut does not go through, the \$2.5 million set aside for the city by PG&E for under-grounding and if staff was familiar with the \$1 million shortchange, and what the

city could do about that shortchange issue **(5 - 0)**. A motion was made to approve the plan.

Discussion ensued with Mr. Kirn responding to questions and comments of Councilmembers Boyajian and Calhoun relative to needy areas/priorities and if staff looks for areas that meet criteria like the Tower District, if scenic streets with a lot of traffic are concentrated on, and the potential transfer of funds to areas outside of the city. Councilmember Calhoun questioned if there was a need for staff to involve Council more as policy-makers relative to what will happen to the money in the future and possibly taking a more aggressive approach and further explained.

147-154

5/2/06

On motion of Councilmember Westerlund, seconded by Councilmember Sterling, duly carried, RESOLVED, the revised Three-Year Underground Utility Plan hereby approved, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
 Noes : None
 Absent : Duncan

(1-J) RESOLUTION - INTENT TO ANNEX FINAL TRACT NO. 5530 TO CFD NO. 11, ANNEXATION NO. 6, AND SETTING THE REQUIRED PUBLIC HEARING FOR MAY 23, 2006

Councilmember Westerlund stated it was his understanding the item was being removed from the agenda by staff and Public Works Director Healey confirmed staff was requesting a one week delay and added the applicant had no problem with that. Mr. Healey and applicant representative Jeff Roberts responded to questions of Acting President Perea relative to whether it was necessary to pull the item, if the applicant was agreeable to a one week delay, what staff's reason was for wanting to pull the item, how inconsistent the staff report language was, and if there was any way to move forward on the matter this date by placing the changes that will be made into the record. Councilmember Calhoun noted the assessment amount was not included in the report and stated unless a dollar amount is included he would not support it, and questioned why staff would bring this forth without a dollar amount, with Mr. Healey stating a mistake was made and staff needed to go back and review the report and then bring it back.

On motion of Councilmember Westerlund, seconded by Councilmember Calhoun, duly carried, RESOLVED, Item 1-J laid over one week to May 9, 2006, by the following vote:

Ayes : Boyajian, Calhoun, Dages, Sterling, Westerlund, Perea
 Noes : None
 Absent : Duncan

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:

(3-A) ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION: COF V. M. J. MENEFEER CONSTRUCTION, INC., AND GREAT AMERICAN INSURANCE COMPANY (RE: NO NEIGHBORHOOD LEFT BEHIND CONTRACT)

The City Council met in closed session in Room 2125 at the hour of 2:40 p.m. to consider the above matter and reconvened in regular open session at 2:58 p.m.

CLOSED SESSION ANNOUNCEMENT:

Interim City Attorney Sanchez announced a proposed settlement and proceeding with a settlement agreement was approved by Council on a vote of 6 to 1 with President Duncan absent.

ADJOURNMENT

There being no further business to bring before the joint bodies, the hour of 2:59 p.m. having arrived and hearing no objections, Acting President Perea declared the meeting adjourned.

Approved on the ____9th____ day of _____ May _____, 2006.

/s/

ATTEST:

/s/

Henry Perea, Acting Council President

Yolanda Salazar, Assistant City Clerk